

2:19-cv-01697-JAD-DJA - January 10, 2020

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEVADA

3 COMMODITY FUTURES TRADING)
COMMISSION,)

4 Plaintiff,)

5 vs.)

6 DAVID GILBERT SAFFRON a/k/a)
7 DAVID GILBERT and CIRCLE)
8 SOCIETY, CORP.,)

9 Defendants.)

Case No. 2:19-cv-01697-JAD-DJA

Las Vegas, Nevada

January 10, 2020

10:04 a.m. - 10:34 a.m.

Courtroom 6D

SHOW CAUSE HEARING

CERTIFIED COPY

11 REPORTER'S TRANSCRIPT OF PROCEEDINGS
12 BEFORE THE HONORABLE JENNIFER A. DORSEY
13 UNITED STATES DISTRICT COURT JUDGE

14 APPEARANCES:

15 For the Plaintiff:

16 ***DANIELLE E. KARST, ESQ.***

17 COMMODITY FUTURES TRADING COMMISSION

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20
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22 United States District Court
23 333 Las Vegas Boulevard South, Room 1334
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24 Proceedings reported by machine shorthand. Transcript
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AMBER M. McCLANE, RPR, CRR, CCR #914

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1 LAS VEGAS, NEVADA; FRIDAY, JANUARY 10, 2020; 10:04 A.M.

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3 P R O C E E D I N G S

4 **COURTROOM ADMINISTRATOR:** Now's the time set for a
5 show cause hearing in Case Number 2:19-cv-1697-JAD-DJA,
6 Commodity Futures Trading Commission versus David Gilbert
7 Saffron.

8 Counsel, please state your appearance.

9 **MS. KARST:** Good morning, Your Honor. Danielle Karst
10 for the Commodity Futures Trading Commission.

11 **THE COURT:** And I will note that there is no one at
12 defense table, so there's no one appearing on behalf of the
13 defendants David Gilbert Saffron and Circle Society Corp.

14 This was a continued hearing -- continued show cause
15 hearing. I had issued an order to show cause why defendant
16 Circle Society should not be held in civil contempt for
17 violation of the Court's temporary restraining order. When we
18 showed up for that hearing last time, although Circle Society
19 had had an attorney show up on its behalf, he was permitted to
20 withdraw immediately before that hearing the last time we
21 showed up. So we continued this. Former counsel for Circle
22 Society filed a notice indicating that he had informed Circle
23 Society, his prior client, that -- what was going on and that
24 this hearing was being continued. So I note that no one has
25 shown up to show cause.

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1 In the meantime, we converted the TRO to a
2 preliminary injunction. And so, in effect, that TRO is no
3 longer in existence. It's been converted. So the request for
4 an OSC for civil contempt on the TRO is -- is moot.
5 Thankfully, though, CFTC did also file at Document Number 40 a
6 motion for issuance of an order to show cause as to why
7 defendants Circle Society and also David Saffron, who is one
8 of the targets of the Court's preliminary injunction order,
9 should not be held in civil contempt for violations of that
10 preliminary injunction order. So that's at Document
11 Number 40. So that is currently pending.

12 There's also -- in the meantime, something else that
13 did occur, Saffron was served by publication. And when the
14 time for his answer had expired, default was entered. And
15 although default was entered by the clerk, that same day --
16 later that same day the clerk received an answer from Saffron
17 and that was filed, but it was filed after the default was
18 entered. And so CFTC has also now filed a motion to strike
19 that answer because that is a -- because Saffron is a
20 defendant who is defaulted.

21 The opposition time for that motion has not yet
22 expired. I think it's --

23 **MS. KARST:** Yes, Your Honor. The docket notes that
24 the response for the CFTC's motion to strike at ECF Number 45,
25 the response is due next Friday, January 17th.

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1 **THE COURT:** Okay. So it's too early for me to
2 resolve that today. We need to wait and see if we get a
3 response from Mr. Saffron.

4 In his answer, we have a new address that we haven't
5 seen before.

6 That was just a CSO.

7 We have a new answer -- or a new address in Victoria,
8 Australia, I believe?

9 **MS. KARST:** Yes, Your Honor. The CFTC believes
10 Mr. Saffron has made a misrepresentation to the Court in his
11 answer regarding his whereabouts. Although Mr. Saffron claims
12 to reside in Victoria, Australia, the CFTC has reached out to
13 its sister regulatory authority in Australia. That authority
14 is called the Australian Securities and Investments
15 Commission, otherwise known as ASIC. And ASIC had made a trip
16 out to Saffron's purported address in Victoria.
17 Representatives of ASIC knocked on the door. They spoke with
18 a lady residing at that address, and she said that she had
19 never heard of Mr. Saffron. So we believe that his
20 representation to the Court as to his whereabouts in Australia
21 is false.

22 And in addition to the information we learned from
23 ASIC, we have been contacted recently by a customer who
24 believes that Saffron is back in the Los Angeles area, and
25 that customer provided the Commission with a restaurant

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1 receipt with his name on it dated January 4th, 2020, at the
2 Beverly Hills SLS Hotel restaurant.

3 And we've also received word from customers that
4 Mr. Saffron is continuing to post in the Telegram chat app for
5 Circle Society members that he is available for meetings in
6 Los Angeles, Las Vegas, or Atlanta. So we believe that he is
7 currently in the United States.

8 **THE COURT:** Hold on one second. What's going on,
9 guys?

10 **THE MARSHAL:** Nothing.

11 **THE COURT:** Oh. Okay.

12 **COURT SECURITY OFFICER:** Is your phone off?

13 **UNIDENTIFIED SPEAKER:** It's on silent.

14 **THE COURT:** Okay. All right. So we think he's in
15 the United States?

16 **MS. KARST:** Yes, Your Honor.

17 **THE COURT:** Okay.

18 **MS. KARST:** And in addition, Your Honor, I have an
19 obligation to advise the Court of communications that I
20 received relevant to today's proceeding. Last night,
21 January 9th, 2020, the CFTC received a short e-mail from
22 Mr. Saffron. With the Court's permission, I can read the
23 e-mail, or I have a copy for the Court.

24 **THE COURT:** Please read it.

25 **MS. KARST:** Yes, Your Honor. The e-mail at 8:02 p.m.

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1 yesterday, January 9th, reads, "to whom it may concern: Today
2 I filed the attached form that the CFTC has requested in their
3 pleadings. I am trying to organize legal representation to
4 begin settlement talks with the CFTC. The reason I have not
5 attend court is the -- I've been getting credible death
6 threats. Thank you, David Saffron. January 9th, 2020."

7 **THE COURT:** And what was attached, if anything?

8 **MS. KARST:** Yes, Your Honor. What was attached to
9 the e-mail was a form entitled Consent to Release of Financial
10 Records. And this is a form, Your Honor, that we provided to
11 Mr. Saffron, and it was a form that was required by your
12 preliminary injunction order. It's standard language in
13 preliminary injunction orders, and we ask defendants to
14 provide this form to direct any banks or credit unions,
15 traditional financial institutions to disclose information
16 regarding the defendant's accounts.

17 However, Your Honor, in this case I will note that
18 the form is essentially useless, and it's useless because
19 we're not aware of any traditional bank, credit union, or
20 other financial accounts. While this form might have some
21 efficacy in a traditional fraud case where a defendant holds
22 traditional bank accounts, here we believe that Mr. Saffron's
23 assets may be held either in offshore accounts or in an
24 off-line storage wallet and so the form is useless.

25 We've received no documents, no accounting. I

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1 wouldn't even know where to send the form to that he signed,
2 and I also note for the record the form hit the docket without
3 the e-mail this morning on my way to court. It was about
4 8:50 a.m. But I wanted to make the Court aware of the e-mail
5 that we had received yesterday evening.

6 **THE COURT:** And I hadn't noticed. So you're saying
7 the form got filed as well?

8 **MS. KARST:** Yes, Your Honor. The form was filed I
9 believe as a stand-alone form this morning. It hit the
10 docket. I saw it on my e-mail. I believe it's ECF Number 46.

11 And I just want to note for the record that the CFTC
12 believes the e-mail in -- or, excuse me, the form, the Consent
13 to Financial Records, although it is a form required by
14 Your Honor's preliminary injunction order, the form in no way
15 purges Mr. Saffron's contempt. It's useless in this case for
16 the reasons that I just described. And, you know, what we
17 really need and what was ordered by the Court is the
18 defendant's business records and an accounting of assets.
19 Because, without those, Your Honor, the CFTC is unable to
20 determine the full scope and the extent of the fraud. We are
21 unable to determine the number of defrauded customers and the
22 extent of the customer losses. We're aware of 160-plus
23 customers today and over 15 million taken in, but we -- we
24 don't know the full extent of the fraud.

25 And the preliminary injunction order also requires an

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1 accounting -- an accounting necessary to determine what assets
2 exist to satisfy any judgment that this Court may later order,
3 and the CFTC has made repeated demands on the defendant for
4 the documents and the accounting. We've sent him e-mails to
5 an e-mail address that he actively uses. These were attached
6 to our motion to show cause at ECF Number 40. We sent him
7 e-mails on December 9th, December 16th, and again I sent him
8 an e-mail, myself, on January 2nd, 2020, asking him to purge
9 his contempt and to provide documents and accounting. And the
10 only thing that I've received in response to the multiple
11 demands is the e-mail that I received yesterday evening along
12 with the form.

13 **THE COURT:** All right. So let's talk about where we
14 go from here then. So with the TRO converted to the
15 preliminary injunction, I think the motion at Number 24 for
16 issuance of an -- well, I'm sorry, the OSC, which I did issue
17 in response to Document Number 24, is probably not the one
18 we're dealing with. That one's probably moot at this point,
19 and really what we need is to focus on the Document Number 40,
20 which is CFTC's motion for issuance of order to show cause as
21 to why defendants David Saffron and Circle Society should not
22 be held in civil contempt for violations of the Court's
23 preliminary injunction order which was issued on December 6th
24 of 2019.

25 So what is CFTC's position on what is necessary now?

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1 I have the proposed orders that were attached to that motion.
2 There's the proposed order to show cause, and then there's
3 subsequently a proposed order regarding contempt.

4 Is it CFTC's position -- now, we haven't received any
5 response to the motion for issuance of an order to show cause.
6 The responses to that motion would have been due on the 3rd of
7 January, so no response has been received.

8 I don't know what to even call this new filing that
9 popped up this morning. It is certainly not a brief. It is
10 not a response. It is not --

11 Danielle, can you confirm for me that that's not even
12 captioned in some way as a response to the motion for OSC?

13 **COURTROOM ADMINISTRATOR:** No, Your Honor. It's
14 entitled Consent to Release of Financial Records.

15 **THE COURT:** All right. So it's the form that
16 Ms. Karst was speaking about.

17 So, Ms. Karst, what is CFTC's position on next steps?

18 **MS. KARST:** Yes, Your Honor. The CFTC really would
19 like for the Court to issue a civil contempt order against
20 Mr. Saffron and Circle Society. The CFTC is requesting the
21 issuance of a bench warrant as well as an order for fines for
22 failure to comply with the Court's orders.

23 **THE COURT:** So you've structured this, though, as a
24 motion for order to show cause. Is the show cause order a
25 prerequisite? Is that a step that the Court must take before

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1 issuing the -- a contempt order, or is there some hybrid? I
2 think I'm just trying to understand exactly. Because of the
3 way that it has been proposed to the Court by CFTC as this
4 sort of dual-step process, it would seem to grant that motion
5 at this point would cause me to issue an order to show cause
6 and not yet the civil contempt order.

7 **MS. KARST:** Yes, Your Honor. I'll respond to that.
8 When I filed the papers and I filed both proposed orders, I
9 was anticipating an issuance of a show cause for Mr. Saffron
10 to appear today in response to our motion for violations of
11 the preliminary injunction. That did not happen. It happened
12 with the -- our motion for violations of the temporary
13 restraining order. A -- an order to show cause was quickly
14 thereafter issued. It didn't happen here.

15 I'll note for the record that Circle Society was
16 ordered to appear at the last hearing on the then pending
17 CFTC's motion to show cause at ECF Number 24. No corporate
18 representative, which would be Mr. Saffron, he's the
19 president, sole corporate officer of the company, no one
20 appeared at that hearing. Mr. Saffron clearly has notice of
21 today's hearing, which was continued from the last hearing.
22 Mr. Van provided confirmation to the Court that he informed
23 Mr. Saffron to appear at today's hearing.

24 So the CFTC today is requesting issuance of a civil
25 contempt order along with the bench warrant and fines.

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1 However, Your Honor, I will note, given the CFTC's filing, the
2 CFTC is amenable to what Your Honor just spoke about, which is
3 issuing the show cause order for Mr. Saffron to appear within
4 a certain period of days and to explain also that, if he fails
5 to appear, that the Court then may issue a bench warrant, and
6 the CFTC would also be requesting fines -- daily fines for
7 defendant's continual failure to comply with the Court's
8 orders. The CFTC has and can submit to the Court, you know,
9 fine calculation worksheets of what that fine would look like.
10 The CFTC's proposed a fine of \$5,000 a day for failure to
11 comply with this Court's orders.

12 But I want to make it clear that the CFTC really
13 believes that fines are ineffective here because no assets of
14 the defendants are held by the Court. The CFTC can't identify
15 any assets without an accounting. And we believe at this
16 point, Your Honor, a bench warrant and incarceration are the
17 only way to compel Mr. Saffron to do anything. So without a
18 bench warrant and incarceration, you know, the only other
19 option for the CFTC would be to request leave to file default
20 judgment motions against both defendants under Federal Rules
21 of Civil Procedure 55(b), but we believe strongly the contempt
22 issue is a stand-alone problem. And we believe that problem
23 is separate and apart from the merits of the case.

24 **THE COURT:** So a couple things. So if I were to
25 issue an order to show cause, would it have to require him to

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1 show up in person and show cause, or could it require him to
2 show cause in writing? What is the CFTC's position on that?

3 **MS. KARST:** The CFTC believes that Mr. Saffron should
4 be ordered to appear in person personally and to explain his
5 failure to comply with this Court's orders. And also, if he's
6 ordered to show, the Court then also can make inquiry,
7 Your Honor, of whether Mr. Saffron is continuing to violate
8 the injunctive provisions of the preliminary injunction order.
9 We believe and received communications from customers that
10 Mr. Saffron is continuing to solicit and he's continuing to
11 post messages in the Telegram chat app with 2020 investment
12 plans for customers. And we believe that is a clear and
13 serious violation of the Court's existing preliminary
14 injunction order.

15 **THE COURT:** So if I were to now grant that motion for
16 order to show cause, how long out would you propose the show
17 cause hearing? I realize you have to continue to travel for
18 these hearings. So when -- when would you be available?

19 **MS. KARST:** Yes, Your Honor. I could be back within
20 two weeks, ten days. Whenever the Court would like for me to
21 appear, I'm prepared to be back here.

22 **THE COURT:** Okay. Do we have time on the 24th,
23 Danielle?

24 **COURTROOM ADMINISTRATOR:** Yes, Your Honor.

25 **MS. KARST:** Your Honor, if I may just check my --

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1 **THE COURT:** Please.

2 **MS. KARST:** -- calendar really quickly?

3 **THE COURT:** Ms. Karst.

4 **MS. KARST:** Yes, Your Honor. I am available to
5 appear back in Court on January 24th, which I believe is a
6 Friday.

7 **THE COURT:** It is a Friday. Why don't we put it on
8 at 3:00. That might even allow you to travel that day. All
9 right.

10 So with no opposition and good cause appearing, I'm
11 granting the motion for issuance of order to show cause as to
12 why defendants David Saffron and Circle Society should not be
13 held in civil contempt for violations of the Court's
14 preliminary injunction order at Document 40. I will issue a
15 show cause. I'll sign the show cause order or some version of
16 the proposed order, and we will set this for Mr. Saffron and
17 for a representative -- I realize we all understand that
18 Circle Society is Mr. Saffron -- but also for Circle Society
19 or a representative of Circle Society to appear.

20 I will let you know, Ms. Karst, that at this point --
21 so I've -- I've contemplated the appropriate contempt
22 sanctions, and I am, at this point, inclined to follow the
23 structure that was imposed by U.S. District Judge Matz,
24 M-a-t-z, granting in part the Commission's motion for civil
25 contempt in *CFTC versus Emerald Worldwide Holdings, Inc.* I

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1 think that the process that he used is a suitable course to
2 follow for defendants' similar violations in this case.

3 So that's the structure that I am inclined to go
4 with, which would start, I believe, with monetary sanctions
5 and then escalate from there. So that's really what I'm
6 inclined to do at this point.

7 At the hearing in two weeks, I would appreciate if
8 the CFTC is prepared to argue for appropriate daily fine
9 amounts. You've just indicated that you think it should be
10 \$5,000. So I'll hear more argument on that issue, if that's
11 the course that I intend to take, and how long the daily fines
12 should go before an escalation of additional steps.

13 So if you could be prepared sort of to talk about
14 those concepts at that hearing in two weeks, I would
15 appreciate that.

16 **MS. KARST:** Yes, Your Honor. And is -- may I ask, is
17 the Court contemplating daily fines to begin the date of the
18 next hearing?

19 **THE COURT:** Potentially.

20 **MS. KARST:** Yes, Your Honor. I'll be prepared, and I
21 can also prepare fine calculation worksheets with proposed
22 fines as well.

23 **THE COURT:** Is CFTC experiencing at this point
24 anything that would require compensatory relief, or is this
25 just coercive at this point?

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1 **MS. KARST:** Your Honor, at this point we were seeking
2 coercive sanctions. You know, I'll just note for the record,
3 you know, I've been here a number of times. We have, you
4 know, spent a lot of money and time filing all of these
5 motions that would, frankly, be unnecessary had defendants
6 complied with Your Honor's orders.

7 **THE COURT:** I understand.

8 So I will today sign an order to show cause, and I
9 will ask also that CFTC make efforts to serve that at every
10 known address. I know that you have a number of e-mail
11 addresses, and certainly if you could send it back to whatever
12 the e-mail address was that you received that e-mail last
13 night from Mr. Saffron as well.

14 **MS. KARST:** Yes, Your Honor. Certainly.

15 **THE COURT:** All right. And the Court will, of
16 course, serve it on him at the last known address and -- but,
17 as you've represented, that may not -- that address in
18 Australia may not be a valid one.

19 **MS. KARST:** Yes, Your Honor.

20 **THE COURT:** All right. So that's what we'll do.
21 We'll -- I will get that order to show cause out, and we will
22 go forward with this hearing in two weeks.

23 In the meantime, I will monitor whether we get a
24 response to the motion to strike and take appropriate actions
25 either before the hearing or at the next hearing with respect

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1 to the motion to strike the answer.

2 **MS. KARST:** Yes, Your Honor. Thank you.

3 And if I may just raise one other issue?

4 **THE COURT:** Sure.

5 **MS. KARST:** The CFTC, Your Honor, would like to
6 advise the Court that Marcus Mumford, an attorney purporting
7 to act on Mr. Saffron's behalf, also e-mailed the CFTC a
8 preliminary answer. That's what he titled the document. He
9 e-mailed this to the CFTC on December 23rd, 2019. I will note
10 for the record this preliminary answer has not reached the
11 docket, has not been filed, although Mr. Mumford claimed in
12 his document that he mailed it to the Clerk's Office.

13 So I would just like to make the Court aware of that
14 preliminary answer, which, you know, if it does hit the
15 docket, the CFTC would like an opportunity to respond to that.
16 We believe that is inappropriate and that preliminary answers
17 are not permitted under the Federal Rules of Civil Procedure.

18 And I'll also note that Mr. Mumford is not an
19 attorney licensed to practice in Nevada or before this Court.
20 He is not filed any *pro hac vice* applications. And pursuant
21 to Local Rule IA 11-2, Mr. Mumford must file a verified
22 petition with the Court to practice in this case, and he has
23 not done so. And in the event that he does file any such
24 petition, the CFTC advises the Court that it would oppose such
25 a petition given his disciplinary history and repeated

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1 sanctions in multiple states and past behavior in
2 Federal Court. Mr. Mumford has been sanctioned in Utah,
3 Oregon, and New York, and there was an incident in the state
4 of Oregon in which he was tased. So -- I wanted to make the
5 Court.

6 **THE COURT:** I'm sorry. Did you just say tased?

7 **MS. KARST:** Yes, Your Honor.

8 **THE COURT:** Okay.

9 **MS. KARST:** And after that incident Mr. Mumford
10 agreed not to practice in the state of Oregon. And so I want
11 to make the Court aware of this communication we received also
12 on December 23rd, which has not hit the docket.

13 **THE COURT:** All right. Thank you for the heads-up on
14 Mr. Mumford. I haven't seen anything.

15 Danielle, have you seen anything from Mr. Mumford?

16 **COURTROOM ADMINISTRATOR:** No, Your Honor.

17 **THE COURT:** All right. So we haven't seen that.

18 And your understanding is that he was purporting to
19 represent Mr. Saffron, not Circle Society?

20 **MS. KARST:** Yes, Your Honor. We received various
21 e-mail communications for him and a voice mail before the very
22 first hearing, and I have only communicated with him via
23 e-mail and asked that, you know, he enter an appearance, file
24 the appropriate papers before the Court to practice in this
25 case, and until such time as he does, you know, I will not --

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1 I'm not going to engage in any substantive communications with
2 him.

3 **THE COURT:** Okay. All right. Well, thank you for
4 that. We will resume in two weeks with the contempt hearing
5 and the question of whether contempt sanctions should issue
6 and to what extent.

7 Anything else, Ms. Karst?

8 **MS. KARST:** No, Your Honor. Nothing. Nothing else
9 at this time.

10 **THE COURT:** All right. Thank you. Then we will get
11 that order out right away and see you in two weeks.

12 **MS. KARST:** Thank you very much for the Court's time.

13 **THE COURT:** Thank you. We're adjourned.

14 *(Proceedings adjourned at 10:34 a.m.)*

15 --o0o--

16 COURT REPORTER'S CERTIFICATE

17 I, AMBER M. McCLANE, Official Court Reporter, United
18 States District Court, District of Nevada, Las Vegas, Nevada,
19 do hereby certify that pursuant to 28 U.S.C. § 753 the
20 foregoing is a true, complete, and correct transcript of the
21 proceedings had in connection with the above-entitled matter.

22
23 DATED: 1/17/2020

24
25 /s/

Amber M. McClane

AMBER McCLANE, RPR, CRR, CCR #914

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